

ASSEMBLY BILL

No. 3

Introduced by Assembly Member Bonta
(Coauthors: Assembly Members Chiu, Eggman, Cristina Garcia,
Levine, and Rendon)
(Coauthors: Senators Allen, De León, and Hueso)

December 5, 2016

An act to add Chapter 5.7 (commencing with Section 13500) to Part 3 of Division 9 of the Welfare and Institutions Code, relating to immigration, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 3, as introduced, Bonta. Public defenders: legal counsel: immigration consequences: grants.

Existing law designates the State Department of Social Services as the single agency with full power to supervise every phase of the administration of public social services, except health care services and medical assistance. Existing law requires the department, subject to the availability of funding, to contract with qualified nonprofit legal services organizations to provide legal services to unaccompanied undocumented minors, as defined, who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in this state. Existing law also requires a court, prior to accepting a guilty or nolo contendere plea, to advise a defendant that, if the defendant is not a citizen, conviction of the charged offense may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization, as specified.

This bill would require the department or a nonprofit organization contracting with the department, as provided, to issue requests for proposal and issue grants to qualified legal services projects, qualified support centers, or county offices of the public defender that meet specified requirements, to expand their programs in order to serve as regional centers capable of providing legal training, written materials, mentoring, and technical assistance to county offices of the public defender in this state on issues relating to the immigration consequences of criminal convictions. The bill would also require the department or contracted nonprofit organization, as provided, to issue requests for proposal and issue grants to qualified legal services projects, qualified support centers, or county offices of the public defender that meet specified requirements, that can act as a statewide resource center to the regional centers and county offices of the public defender to provide these regional centers and offices with ongoing training, written materials, mentoring, and technical assistance, and to coordinate a statewide collaborative to ensure efficient delivery of high quality legal services.

This bill would additionally require the department or contracted nonprofit organization, as provided, to issue requests for proposal and issue grants to county offices of public defenders for those offices to secure new tools to enable their attorneys to competently represent noncitizen defendants in current cases and obtain relief for prior invalid convictions, as provided, and for those offices to enable deputy public defenders and paralegals to assist nonprofit organizations and private immigration attorneys serving noncitizens in removal proceedings with locating, collecting, and copying legal documents relating to the noncitizen's prior criminal case.

This bill would appropriate \$_____ from the General Fund to the department or contracted nonprofit organization for the purposes of the grants awarded pursuant to this bill.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) The immigration consequences of criminal convictions have
2 a particularly strong impact in California. One out of every four
3 persons living in the state is foreign-born. One out of every two
4 children lives in a household headed by at least one foreign born
5 person. The majority of these children are United States citizens.
6 It is estimated that recently 50,000 parents of children who are
7 United States citizens in California were deported in a period of
8 a little over two years. Once a person is deported, especially after
9 a criminal conviction, it is extremely unlikely that he or she ever
10 is permitted to return.

11 (b) Avoiding deportations also would result in significant budget
12 savings associated with the economic and social disruptions caused
13 by deportation, which can include the following: the loss of a
14 family's primary wage earner, which can make the family more
15 reliant on the social services safety net and public health insurance
16 programs; the lost tax revenue from the deported worker; the
17 placement of children in foster care; the loss of the family home
18 to foreclosure; and disruption in children's school attendance.

19 (c) In *Padilla v. Kentucky*, 559 U.S. 356 (2010), the United
20 States Supreme Court held that the Sixth Amendment to the United
21 states Constitution requires defense counsel to advise noncitizen
22 defendants regarding the potential immigration consequences of
23 their criminal cases. California courts have also held that defense
24 counsel must investigate and advise regarding the immigration
25 consequences of the available dispositions, and should, when
26 consistent with the goals of and informed consent of the defendant,
27 and as consistent with professional standards, defend against
28 adverse immigration consequences (*People v. Soriano*, 194
29 Cal.App.3d 1470 (1987), *People v. Barocio*, 216 Cal.App.3d 99
30 (1989), *People v. Bautista*, 115 Cal.App.4th 229 (2004)). In 2015,
31 California enacted Assembly Bill 1343 (Thurmond), adding
32 Sections 1016.2 and 1016.3 to the Penal Code, which codified the
33 holding of *Padilla v. Kentucky* and the holdings of the California
34 court decisions that defense counsel must provide a noncitizen
35 defendant with affirmative and competent advice on the
36 immigration consequences of a proposed disposition and, when
37 appropriate, defend against those consequences. In the last two
38 years, California voters and the Legislature have passed laws that
39 provide efficient vehicles to eliminate convictions that were legally
40 invalid due to lack of information about immigration consequences,

1 including subdivision (b) of Section 18.5 of the Penal Code, and
2 Sections 1203.43 and 1473.7 of the Penal Code.

3 (d) With an accurate understanding of immigration
4 consequences, many noncitizen defendants are able to plead to a
5 conviction and sentence that satisfy the prosecution and court but
6 that have no, or fewer, adverse immigration consequences than
7 the original charge.

8 (e) Providing defense counsel with access to individual
9 consultation, written resources, and training on immigration-related
10 matters will ensure that the counsel's clients receive equal
11 treatment under the law and are properly advised of the
12 immigration consequences of their cases and can make informed
13 choices.

14 (f) Defendants who are misadvised or not advised at all of the
15 immigration consequences of criminal charges often suffer
16 irreparable damage to their current or potential lawful immigration
17 status, resulting in penalties such as mandatory detention,
18 deportation, and permanent separation from close family.

19 (g) Once in removal proceedings, a noncitizen may be
20 transferred to immigration detention facilities across the country.
21 Many criminal offenses trigger mandatory detention, so that the
22 person may not request bond. In immigration proceedings, there
23 is no court-appointed right to counsel, and the majority of detained
24 immigrants go unrepresented. Immigration judges often lack the
25 power to consider whether the person should remain in the United
26 States in light of equitable factors such as serious hardship to
27 United States citizen family members, length of time living in the
28 United States, or rehabilitation.

29 SEC. 2. Chapter 5.7 (commencing with Section 13500) is added
30 to Part 3 of Division 9 of the Welfare and Institutions Code, to
31 read:

32
33 CHAPTER 5.7. FUNDING FOR IMMIGRATION COUNSEL FOR
34 DEFENSE COUNSEL
35

36 13500. For purposes of this chapter, both of the following
37 definitions shall apply:

38 (a) "Qualified legal services project" has the same meaning as
39 that term is defined in subdivision (a) of Section 6213 of the
40 Business and Professions Code.

1 (b) “Qualified support center” has the same meaning as that
2 term is defined in subdivision (b) of Section 6213 of the Business
3 and Professions Code.

4 13501. (a) The department shall issue requests for proposal
5 and issue grants to qualified legal services projects, qualified
6 support centers, or county offices of the public defender, to expand
7 their programs in order to serve as regional centers capable of
8 providing legal training, written materials, mentoring, and technical
9 assistance to county offices of the public defender in this state on
10 issues relating to the immigration consequences of criminal
11 convictions.

12 (b) The department shall issue requests for proposal and issue
13 grants to one or more qualified legal services projects, qualified
14 support centers, or county offices of the public defender that can
15 act as a statewide resource center to the regional centers and county
16 offices of the public defender to provide these regional centers and
17 offices with ongoing training, written materials, mentoring, and
18 technical assistance, and to coordinate a statewide collaborative
19 to ensure efficient delivery of high quality legal services.

20 (c) The department shall issue requests for proposal and issue
21 grants to county offices of the public defender for those offices to
22 secure new tools to enable criminal defense attorneys to
23 competently represent noncitizen defendants in current cases and
24 obtain relief for prior invalid convictions, by hiring staff or by
25 arranging for assistance from qualified advisers such as a regional
26 center, statewide resource center, or private experienced
27 immigration attorneys, or both hiring staff and arranging for that
28 assistance.

29 (d) The department shall issue requests for proposal and issue
30 grants to county offices of the public defender for those offices to
31 enable deputy public defenders and paralegals to assist nonprofit
32 organizations and private immigration attorneys serving noncitizens
33 in removal proceedings with locating, collecting, and copying legal
34 documents relating to the noncitizen’s prior criminal case,
35 including, but not limited to, the public defender’s file.

36 (e) Notwithstanding subdivisions (a) to (d), inclusive, if the
37 standards specified in Article 4 (commencing with Section 19130)
38 of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government
39 Code for the use of personal service contracts can be established,
40 the department may, in compliance with Article 4 (commencing

1 with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title
2 2 of the Government Code and any applicable competitive bidding
3 requirements set forth in the Public Contract Code, contract with
4 a nonprofit organization to carry out those duties specified in
5 subdivisions (a) to (d), inclusive.

6 (f) The amount of ____ dollars (\$____) is hereby appropriated
7 from the General Fund to the Controller to be allocated to the
8 department or contracted nonprofit organization for the purposes
9 of the grants awarded pursuant to this chapter.

10 13502. Any grants awarded pursuant to subdivision (a) of
11 Section 13501 to be a regional center shall only be made to a
12 qualified legal services project, qualified support center, or county
13 office of the public defender that meets all of the following
14 requirements:

15 (a) Has staff with a sufficient level of experience, as determined
16 by the department, in providing expert training, technical
17 assistance, and written materials regarding the immigration
18 consequences of criminal convictions to criminal defense attorneys.

19 (b) Agrees to provide reporting, monitoring, or audits of services
20 provided, as determined by the department.

21 (c) Agrees to meet standards determined by the department
22 relating to continuing legal education on the immigration
23 consequences of criminal convictions and active participation in
24 the statewide collaborative on this issue.

25 (d) Agrees to maintain adequate legal malpractice insurance
26 and to indemnify and hold the state harmless from any claims that
27 arise from any legal services provided through the grants funded
28 pursuant to this chapter.

29 13503. Any grants awarded pursuant to subdivision (b) of
30 Section 13501 to be a statewide resource center shall only be made
31 to a qualified legal services project, qualified support center, or
32 county office of the public defender that meets all of the following
33 requirements:

34 (a) Has staff with a sufficient level of experience, as determined
35 by the department, in providing expert training, technical
36 assistance, and written materials regarding the immigration
37 consequences of criminal convictions both to criminal defense
38 attorneys and immigration attorneys.

39 (b) Agrees to provide reporting, monitoring, or audits of services
40 provided, as determined by the department.

1 (c) Agrees to maintain adequate legal malpractice insurance
2 and to indemnify and hold the state harmless from any claims that
3 arise from any legal services provided through the grants funded
4 pursuant to this chapter.

5 13504. Any grants awarded pursuant to subdivision (c) of
6 Section 13501 to a county office of the public defender shall only
7 be made to an office that meets all of the following requirements:

8 (a) Agrees to retain staff to provide technical assistance or to
9 obtain technical assistance for attorneys from a regional center,
10 statewide resource center, or private experienced immigration
11 attorney who has a sufficient level of experience, as determined
12 by the department, in providing expert training, technical
13 assistance, and written materials regarding the immigration
14 consequences of criminal convictions to criminal defense attorneys,
15 or agrees to provide that technical assistance and to obtain that
16 technical assistance.

17 (b) Agrees to document the terms of the support provided by a
18 regional center, statewide resource center, or private experienced
19 immigration attorney.

20 (c) Agrees to provide reporting, monitoring, or audits of services
21 provided, as determined by the department.

22 (d) Agrees to maintain adequate legal malpractice insurance
23 and to indemnify and hold the state harmless from any claims that
24 arise from any legal services provided through the grants funded
25 pursuant to this chapter.

26 13505. (a) The department shall adopt regulations to implement
27 this chapter no later than sixty days after the effective date of the
28 act adding this chapter. The adoption or readoption of a regulation
29 authorized by this section is deemed to address an emergency, for
30 purposes of Sections 11346.1 and 11349.6 of the Government
31 Code, and the department is hereby exempted for this purpose
32 from the requirements of subdivision (b) of Section 11346.1 of
33 the Government Code.

34 (b) Notwithstanding subdivision (h) of Section 11346.1 of the
35 Government Code, the department may readopt any emergency
36 regulation authorized by this section that is the same as, or
37 substantially equivalent to, any emergency regulation previously
38 adopted pursuant to this section, and the initial emergency
39 regulations and the one readoption of emergency regulations
40 authorized by this section shall be exempt from review by the

1 Office of Administrative Law. Notwithstanding subdivision (e) of
2 Section 11346.1 of the Government Code, the initial emergency
3 regulations and the one readoption of emergency regulations
4 authorized by this section shall be submitted to the Office of
5 Administrative Law for filing with the Secretary of State and each
6 shall remain in effect for no more than 180 days, by which time
7 final regulations shall be adopted in compliance with Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code.

10 13506. The provisions of this chapter are severable. If any
11 provision of this chapter or its application is held invalid, that
12 invalidity shall not affect other provisions or applications that can
13 be given effect without the invalid provision or application.

14 SEC. 3. This act is an urgency statute necessary for the
15 immediate preservation of the public peace, health, or safety within
16 the meaning of Article IV of the California Constitution and shall
17 go into immediate effect. The facts constituting the necessity are:

18 In order to ensure that Californians are not unnecessarily caught
19 up in the federal government's expected expansion of deportation
20 policies that will have a significant impact on the state's population
21 because of inadequate defense counsel, it is necessary that this act
22 take effect immediately.